



COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

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To: Stormwater Management Regulation TAC Members and Interested Parties

From: David C. Dowling, Policy, Planning, and Budget Director

Date: September 23, 2007

Re: Stormwater Management Regulations: Next Steps

We wanted to take this opportunity to update you on the recent actions of the Virginia Soil and Water Conservation Board relative to the stormwater management regulations so that you would hear directly from the Department the current status of these important regulations.

At the Friday, September 21, 2007 meeting of the Virginia Soil and Water Conservation Board, the Board received a presentation from the Department on the draft proposed stormwater management regulations [Parts I (definitions), II (water quality and quantity technical criteria), III (local program criteria), and XIII (fees)] and received public comment. Following the conclusion of the remarks and a preliminary discussion of the regulations by the Board, the Department recommended that the Board consider withdrawing the current action related to Parts I, II, and III and authorize the filing of a new Notice of Intended Regulatory Action (NOIRA). This recommendation was made to eliminate any question regarding the intent of the original NOIRA to address the Part II water quality and quantity technical criteria when it was published. As the Department explained to the Board, we did not feel that the withdrawing and filing of a new NOIRA would substantially delay the regulation or result in the loss of any progress made to date in developing draft regulations but would provide for additional clear notification to the public regarding the Board's intentions in revising the regulations.

The Department explained to the Board, that even if they went ahead and authorized the proposed regulations at this meeting, that the Department would still need until the Spring of 2008 to develop the fiscal analysis, complete critical portions of the Stormwater Management Handbook such as the BMP design standards, and develop the other necessary supporting materials prior to regulation filing. If the action was withdrawn and a new NOIRA filed, we could still be working on all of these same issues concurrently as the NOIRA advanced. The Board concurred that the proper action was for the withdrawal and filing of a new NOIRA and passed motions in that regard. It is estimated that this approach in the end should only result in a couple of months of additional time added to the action.

However, members of the Board also expressed that the regulations that were presented to them were “on track” and a “very good approach” but also noted that as important as this action is, that we should take the time “to get it right” and to continue to work with technical experts and affected parties to further refine the regulations where found to be necessary. That has also been the philosophy of the Department since the beginning of this action.

In light of the Board’s action, you will see the Department in the coming weeks withdraw the current NOIRA associated with Parts I, II, and III and file a new NOIRA that clearly articulates the Board’s intentions for the regulation to address revisions to Part II on water quality and quantity technical criteria. The draft proposed regulations on Part XIII (fees) will remain on hold until Parts I, II, and III catch up early next year. Under the new NOIRA, the Board has instructed the Department to assemble a TAC to continue working on the regulations and the Department will keep each of you informed as we develop our implementation plan and schedule.

The Board was very complementary of the work of the TAC and the Department to date and the significant progress made on revising the regulations. The Department is also appreciative of the TAC’s assistance, guidance, and support. It is the Department’s intention not to lose any progress made to date on these regulations, just to continue to build on it.

If you have any questions regarding this action, please do not hesitate to contact us.

cc: Virginia Soil and Water Conservation Board
Joseph H. Maroon, Director, Department of Conservation and Recreation
Mark Smith, EPA